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AUTHOR	Stein, Ronald H.; Zuckerman, Judy
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ABSTRACT

As an aid to college administrators, information is presented on the following regulations: (1) Protection of Human Subjects; (2) Title IX of the Educational Amendments of 1972; (3) the Occupational Safety and Health Act of 1970; and (4) Title VI of the Civil Rights Act of 1964. The purpose of the guide is to sensitize administrators to the central issues involved in each regulation and to provide a desk-top reference that will permit judgments as to whether the matter should be pursued. In regard to the regulations on the protection of human subjects, institutions are directed to establish an Institutional Review Committee to determine subject risks, and noncompliance may result in termination of the federal grant or contract. The regulations pertaining to the Educational Amendments of 1972 (prohibiting discrimination in federally-aided educational programs) include the areas of coverage, admission of students, treatment of students, employment, and procedures. In regard to the Occupational Safety and Health Act of 1970, public colleges and universities are excluded from the federal requirements and are only subject to work safety requirements if their states have approved plans. The regulations set extensive standards for programs, materials, and facilities. The purpose of Title VI of the Civil Rights Act was to eliminate widespread discrimination against blacks and other minorities. A bibliography is included. (SW)

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FEDERAL REGULATIONS AND HIGHER EDUCATION: AN OVERVIEW FOR COLLEGE AND UNIVERSITY ADMINISTRATORS: PART II

By Dr. Ronald H. Stein and Judy Zuckerman

Introduction

The Summer 1980 issue of *Administrator's Update* (Volume II, Number 1), attempted to familiarize administrators with federal regulations pertinent to their administrative functions by providing them with a capsule view of three regulations: (1) Section 504 of the Rehabilitation Act of 1973; (2) Family Educational Rights and Privacy Act of 1974; and (3) Student Consumer Information Regulations. Because of the proliferation of federal regulations affecting higher education, it is necessary to devote another issue of *Administrator's Update* to this theme.

Herein, four additional regulations that apply to higher education are summarized. The aim continues to be to sensitize the reader to the central issues involved in each regulation. The design is to present a desk-top reference that will give the administrator sufficient information to judge whether the matter should be pursued. A bibliography is included for those who wish to explore the subject matter in greater detail. In this article the following regulations are considered: (1) Protection of Human Subjects; (2) Title IX of the Educational Amendments of 1972; (3) the Occupational Safety and Health Act of 1970; and (4) Title VI of the Civil Rights Act of 1964.

HEW* REGULATIONS ON THE PROTECTION OF HUMAN SUBJECTS

Principle

The institution of higher education is responsible for ensuring that the safe rights and welfare of humans are protected when they are used as subjects in projects funded by grants from HEW.

Application

These Regulations apply to all activities supported by grants and contracts from HEW in which the subject may be put at risk.

Scope

In order for an institution to receive an award or support from HEW it must have established an Institutional Review Committee that reviews all activities relevant to that grant or contract. The purpose of the review is to determine whether the activity places the subject "at risk." A subject "at risk" is defined in the Regulations as

> "...any individual who may be exposed to the possibility of injury, including physical, psychological, or social injury, as a consequence of participation as a subject in any research, development, or related activity which departs from the application of those established and accepted methods necessary to meet his needs, or which increases the ordinary risk of daily life, including the recognized risks inherent in a chosen occupation or field of service" (45 Code of Federal Regulations 46.103(b)).

Institutions must establish an Institutional Review Committee to determine subject risks.

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* These regulations were promulgated prior to the formation of the Department of Education, and have not been amended to reflect this change.

Dr. Ronald H. Stein is Assistant to the President and Ms. Judy Zukerman is a Graduate Intern at the State University of New York at Buffalo

When the Committee determines that the proposed activity places the subject at risk, it will require that an informed consent be obtained from the subject or his/her authorized representative. The Regulations define the basic elements of informed consent as

> (1) a fair explanation of the procedures to be followed and their programs, including identification of any procedures which are experimental; (2) a description of any attendant discomforts and risks reasonably to be expected; (3) a description of the benefits reasonably to be expected; 4) a disclosure of any appropriate alternative procedures that might be advantageous to the subject; (5) an offer to answer any inquiries concerning the procedures; and (6) an instruction that the person is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject" (45 Code of Federal Regulations 46.103(c)(1)).

The consent may be written or oral. However, it may not include language that would waive any of the subject's legal rights or release the institution from legal liability for negligence. On January 2, 1979, the section of the Regulations concerning informed consent was amended to require that a subject in biomedical or behavioral research must also receive information regarding the availability of medical treatment and compensation. In addition, special reviews and restrictions exist for pregnant women, fetus material, and institutionalized individuals.

Noncompliance may result in termination of the HEW grant or contract.

Noncompliance may result in termination of the HEW grant or contract. If, however, the Secretary of HEW determines that the institution has failed to protect the rights and welfare of subjects in its care, even if HEW funds are not involved, the institution and/or individual may lose eligibility for future HEW funds or activities involving human subjects.

Additional Comments

On August 14, 1979, HEW **proposed** regulations on research with human subjects that were designed to extend, supplement, and modify the existing regulations. The significant changes would have particular impact on the area of social science research. The proposed HEW Regulations may require that: (1) the Institutional Review Board examine and approve all human subject research in an institution if the institution does **any** human subject research funded by HEW; (2) all human subject research be reviewed by the Institutional Review Board irrespective of risk (unless the research is specifically exempted from coverage); (3) the review of research in which there is no more than a minimum amount of risk be expedited; (4) large scale studies of proposed social or economic change, research on educational effectiveness or standardized tests or documents with unidentifiable subjects be either exempt or given a quick review; (5) certain kinds of research involving solely the use of survey instruments, the observation of public behavior, the study of documents, records and specimens, or a combination of any of these activities be exempt or require only expedited review; (6) proposed rules be established for deception research that waive the signing of consents by subjects of innocuous research or whose identity is otherwise kept confidential; and finally, (7) an Institutional Review Board's membership must include at least one nonscientist.

The comment period for the proposed regulations ended in September, 1979. They are currently under review, but it is not expected that any changes will be forthcoming before the end of 1980.

TITLE IX OF THE EDUCATIONAL AMENDMENTS OF 1972

Principle

The law prohibits discrimination on the basis of sex in educational programs that receive federal financial assistance. The design of the regulation was to extend to women the same rights of nondiscrimination that had been legislated relative to race, color, or national origin.

Application

The regulations pertain to "all Department of Health, Education and Welfare grants and contracts supporting research, development, and related activities in which human subjects are involved" (45 Code of Federal Regulations 46.101(a)).

Scope

The Regulations include the areas of coverage, admission of students, treatment of students, employment, and procedures.*

The Regulations include the areas of coverage, admission of students, treatment of students, employment,* and procedures. They apply to all aspects of all educational programs or activities of a school district, institution of higher education, or other entity that receives federal funds for any of those programs, with some exceptions (e.g. military institutions, schools run by religious organizations, institutions that have traditionally been single-sexed).

Title IX states that no person shall, on the basis of sex, be excluded from participation in any academic, extracurricular, research, occupational training, or other educational program or activity conducted by a recipient of federal financial assistance.

The areas of coverage are:

1. **Admissions**

The regulation covers recruitment as well as all admissions policies of those recipients not exempt.

It includes specific instances of sex discrimination through separate ranking of applicants, quotas based on sex, use of sex-biased tests or other selection criteria, and preference given for admission based upon attendance at specific institutions if this preference results in sex discrimination. The regulation also applies to discrimination based on marital or parental status or conditions of pregnancy.

A significant aspect of the regulation concerns recruitment. Comparable efforts must be made to recruit applicants of each sex. In instances where discrimination previously existed, additional remedial recruitment efforts must be undertaken.

II. Treatment

All colleges and universities must treat without discrimination all students admitted to all undergraduate, graduate, and professional programs. The regulation pertains to (1) access to and participation in courses and extracurricular activities; (2) eligibility for benefits, services, and financial aid; and (3) use of facilities, including housing (with the exception of permitting single-sex housing, locker rooms, and toilet and bathing facilities). Certain organizations, such as fraternities and sororities, are exempt from these requirements.

Athletics/physical education: Segregation by sex is accepted in physical education classes during competition in contact sports. In regard to contact sports, or activities where selection is based on competitive skill, athletics may be provided either through separate teams or a single team open to both sexes. While the regulation is directed at securing equal opportunity in the area of athletics, the means of provision is left to the discretion of the institution.

Curriculum: Although the regulation considers sex stereotyping in curricula to be a serious matter, it does not mandate restrictions in this regard.

III. Employment*

Title IX covers all employees in all institutions with the exception of military and religious schools (if compliance would conflict with the tenets of the particular religion). Generally, discrimination on the basis of sex is prohibited in the following areas: employment criteria (unless sex is a bona fide occupational qualification); recruitment; compensation; job classification and structure; fringe benefits; marital or parental status; effect of state or local law; advertising; and preemployment inquiries.

Annual Obligation: None

Additional Comments

In ***Cannon v the University of Chicago***, the Supreme Court held that an individual does not have to exhaust his or her administrative remedies before he or she can seek redress in the Federal Courts under Title IX. Cannon argued that she was denied admission to the University of Chicago at Northwestern Medical School because she was a woman. The Supreme Court held that, where there was a violation of Section 901 of Title IX "no person in the United States shall on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . ." (20 United States Code Section 1681), and where the discriminating institution was receiving Federal financial assistance at the time of the discrimination, a private individual could seek a private right of action: Consequently, Cannon was allowed to continue her law suit under Title IX.

"No person in the United States shall on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . ."

In November, 1979, the U.S. Supreme Court declined to review three appeal court decisions (first, sixth and eighth circuit) which held that HEW lacked jurisdiction under Title IX to review a school's employment practices. In these cases, two of which involved benefits to pregnant employees and the third a claim of equal pay for equal work, the Appeal Courts held that neither the language of Title IX nor an examination of the legislative history revealed that Congress intended that Title IX cover within its scope the employment practices of federally funded educational programs. The Appeal Courts, therefore, concluded that Title IX only forbid sex discrimination against participants in these programs, and "participants" should be properly defined as students. However, as reported in the ***Chronicle of Higher Education*** (August 25, 1980) the U.S. Court of Appeals for the Second Circuit has recently held that Title IX does pertain to employees of educational institutions. The discrepancy among the decisions of the circuits may result in a consideration of the issue by the Supreme Court.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (OSHA)

Principle

OSHA was enacted to provide "a safe work environment and to develop safe and healthful procedures for use on the job" (Adams, p.1).

Application

All private colleges and universities are subject to the federal OSHA requirements unless the states in which they are located have approved plans, in which case they are under the jurisdiction of

Public colleges and universities are excluded from the Federal requirements and are only subject to work-safety requirements if their states

the state. Federal regulations do not apply to state and local governments. Therefore, public colleges and universities are excluded from the Federal requirements and are only subject to work-safety requirements if their states have approved plans. As of June 30, 1978, states and territories with approved plans and accompanying enabling legislation were: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, Wyoming. States and territories that either have withdrawn or not submitted plans are: Colorado, Georgia, Illinois, Kansas, Louisiana, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Trust Territories, Wisconsin.

Scope

It is the design of OSHA that the state governments establish and enforce occupational safety and health standards. Consequently, federal standards apply only until the state plan has been approved by OSHA and adopted by the individual state legislatures. Until the responsibility shifts to the states, the Federal government maintains responsibility for enforcement authority.

The OSHA regulations set extensive standards for programs, materials, and facilities. The categories of established standards include: walking and working surfaces (stairs and ladders); means of egress; power platforms; occupational health and environmental control (ventilation and noise); hazardous materials (gases, liquids, and solids); personal protective equipment; general environmental controls (sanitation and signage); medical and first aid; fire protection; compressed gas and compressed air equipment; materials; handling and storage (trucks, cranes, locomotives and helicopters); machinery and machine guarding; hand and portable tools and other hand-held equipment; welding, cutting and brazing; electrical; and toxic and hazardous substances (chemicals and carcinogenics, including vinyl chloride, asbestos, lead, and benzene).

The OSHA regulations set extensive standards for programs, materials, and facilities.

Employees, or their representatives, have a right to file a complaint with the nearest OSHA office, requesting an inspection if they believe unsafe or unhealthful conditions exist in their workplace. In the event that employees elect to complain, OSHA provides protection against discrimination for employees. Employers may be fined up to $1,000 for each serious violation and optional penalties up to $1,000 for each nonserious violation. In addition, penalties of $1,000 a day may be imposed for failure to correct violations within the proposed time period. Employers who willfully and repeatedly violate the Act may be fined up to $10,000 for each violation.

If the willful violation results in the death of an employee, the penalty is a fine of not more than $10,000, imprisonment of not more than six months, or both. In subsequent convictions, the maximum penalty doubles.

Annual Obligation

Every employer covered by the Act is required to maintain occupational injury and illness records at the employee's place of work, with summaries made at the end of each calendar year. Also, the employer is required to report within 48 hours to the Secretary of Labor any injury or health hazard resulting in one or more fatalities or the hospitalization of five or more employees. Complete records must be available at all times for inspection.

Additional Comments

The U.S. Supreme Court in ***Whirlpool Corp. v Marshall*** (No. 78-1870; February 26, 1980) found that an employee may refuse to perform certain tasks where (1) it could be concluded that there is a real danger of death or serious injury and (2) there is insufficient time, due to the urgency of the situation, to eliminate the danger via statutory enforcement channels. The employee is still obligated to first request that his employer correct the dangers. The Court also found that the employee's wages could be withheld for the time unworked, but the employee could not otherwise be discriminated against, as in the immediate case, by placing a letter of reprimand in his file.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AS AMENDED THROUGH JULY 5, 1973

Principle

This regulation prohibits discrimination on the basis of race, color, or national origin in programs that receive or benefit from federal financial assistance. The purpose of Title VI was to eliminate widespread discrimination against blacks and other minorities. Recipients of federal funds are required to end any current discrimination and to take necessary steps to overcome the effects of past discrimination.

The purpose of Title VI was to eliminate widespread discrimination against blacks and other minorities.

Application

The regulation applies to any program that is assisted by federal funds.

Scope

A recipient under any federally assisted program must not, on the basis of race, color, or national origin:

(1) deny a person service, financial aid, or any benefit under the program;
(2) provide service to any person that differs from that provided to others under the program;
(3) subject an individual to separate treatment in any matter relative to the program, or deny him/her privileges enjoyed by others in the program;
(4) treat an individual differently from others in matters of admission, enrollment, quota, eligibility, membership, participation, or other requirements or services related to the program;
(5) deny a person the opportunity to participate in a planning or advisory body that is an integral part of the program; and
(6) discriminate against a person in matters pertaining to employment.

In addition, a recipient may not subject a person to such discrimination in the determination of types of services, financial aid, other benefits, facilities or site of facilities, or a program. In cases where discrimination had previously existed, a recipient must take affirmative action to overcome its effect. In the absence of prior discrimination, affirmative action may also be taken to remedy the effects of conditions that resulted in limiting participation by persons of a particular race, color, or national origin.

Additional Comments

Allen Bakke applied to the University of California at Davis Medical School. He was rejected, while the school accepted students with lower qualifications into their special admissions program, which set aside a specific number of positions for certain minority groups. Bakke challenged Davis' program on the grounds that it violated Title VI of the Civil Rights Act of 1964 and the Equal Protection clause of the 14th Amendment of the Constitution. The Supreme Court ***(Regents of the University of California v. Bakke)*** agreed, finding that Davis' program, which established a quota for minority admissions, was unconstitutional. Applicants who are not minorities cannot be excluded from being considered for "a specific percentage of seats in an entering class" (98 S. Ct. 2733 (1978)). The Supreme Court did, however, consider that it was appropriate for colleges and universities to take into consideration race and ethnic origin as a competitive consideration in admissions programs.

It should be noted that Title VI does not apply to employment. However, Title VII of the Civil Rights Act of 1964 does address discrimination in employment practices. A case involving "reverse discrimination" in employment is the ***United Steel Workers of America AFL-CIO-CLC v Weber et al.*** In this case the Supreme Court held that private employers and unions may establish race conscious affirmative action plans.

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